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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

COMMONWEALTH LAND TITLE
INSURANCE COMPANY,

Plaintiff,

v.

JAY CHANDRAKANT SHAH,

Defendant.

A156674

(San Francisco City & County
Super. Ct. No. CGC-10-503332)

SHIRLEY S. HWANG,

Plaintiff and Respondent,

v.

JAY CHANDRAKANT SHAH,

Defendant and Appellant.

(San Francisco City & County
Super. Ct. No. CGC-11-512102)

Plaintiff and respondent Shirley Hwang was the victim of a real estate fraud scheme perpetrated by defendant and appellant Jay Shah and several coconspirators. After Shah was criminally convicted of multiple felonies and ordered to pay Hwang over \$300,000 in victim restitution, Hwang filed a civil action against Shah and obtained a judgment that included over \$950,000 in damages for slander of title; \$600,000 in damages for trespass; and \$1.6 million in punitive damages. On appeal from the civil judgment, Shah contends (1) the trial court erred in refusing to apply collateral estoppel to

preclude Hwang from relitigating an issue that was decided against the prosecution in the restitution proceedings; (2) the trial court abused its discretion in ordering Shah to produce discovery on his financial condition; (3) the punitive damages award was excessive; and (4) the trespass damages were unauthorized and/or excessive. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A detailed, factual recitation of Shah’s criminal prosecution is set out in the unpublished opinion in *People v. Shah* (July 8, 2016, A138475 [nonpub. opn.]). We repeat the facts that are relevant to this appeal.

In 2008, Hwang owned three condominium units at One Rincon Hill in San Francisco—units 4802, 4902, and 5501. She marketed all three units, while living in unit 4802. (*People v. Shah* (July 8, 2016, A138475 [nonpub. opn.].))

In January 2009, Shah and his coconspirators recorded forged grant deeds for each of Hwang’s three units and encumbered the properties with \$2.2 million in loans. (*People v. Shah* (July 8, 2016, A138475 [nonpub. opn.].)) In order to obtain appraisals, Shah and one of his coconspirators illegally entered unit 4802 with an appraiser while Hwang was out of town. (*Ibid.* [“The burglary was an integral step in this overall scheme, a necessary predicate to obtaining the loan secured by the properties.”].)

In March 2009, Hwang was notified about the forged grant deed on unit 5501. She reported the matter to law enforcement and soon discovered the forged deeds on the other units. Shah was arrested in March 2010, and Hwang assisted the San Francisco Police Department and the San Francisco District Attorney’s office with their investigations. She also attempted to remove the clouds on her title by filing quiet title lawsuits.

Meanwhile, Hwang learned that Shah's coconspirator, Winston Lum, had quitclaimed his interest in one of her units to a third party, and that a prospective buyer was trying to purchase the unit. Hwang also learned that the same individuals who forged the deeds for her properties were involved in the murder of another real estate fraud scheme victim, and that the murder victim's property was eventually granted to Shah. Thus, Hwang feared for her personal safety and worried that her properties were still at risk.

In 2010, Hwang sold unit 4902 for \$1,370,000. She sold unit 4802 in 2011 for \$1,355,000.

A. Criminal Trial and Restitution Proceedings

After a criminal trial in 2012, Shah was convicted of conspiracy to commit money laundering; identity theft; grand theft; money laundering; burglary; and filing false deeds and deeds of trust. (*People v. Shah* (July 8, 2016, A138475 [nonpub. opn.].) He was sentenced to 20 years in prison and ordered to pay a \$14.1 million criminal restitution fine. (*Ibid.*)¹

Following Shah's conviction, the People moved to modify the sentence to include a restitution order pursuant to Penal Code section 1202.4, subdivision (f). The People requested over \$5 million in restitution for Hwang. From the outset of the proceedings on the motion², the trial court directed that only the district attorney would present evidence and that

¹ Shah's conviction was affirmed on appeal, with a modification to his sentence reducing it by 16 months. (*People v. Shah* (July 8, 2016, A138475 [nonpub. opn.].)

² Hwang requests judicial notice of the reporter's transcripts of the restitution hearings held on February 26, 2015, and March 24, 2015. We deferred ruling on the request pending our determination of the merits of the appeal, and we now grant it. (*Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 90 (*Rodgers*) [taking judicial notice of prior court records to determine collateral estoppel issue].)

Hwang's counsel would not argue or examine witnesses. The court later denied the prosecution's motion seeking to allow Hwang's counsel to participate in the restitution hearings.

The trial court awarded total restitution to Hwang in the amount of \$311,767.05, plus interest. In so ruling, the court denied the People's request for amounts attributable to "Loss of Property Value[.]" finding that "[t]he People have not shown by a preponderance of the evidence that Units 4802 and/or 4902 would have been sold at the time or the price asserted. [¶] It is undisputed that in January 2009, the real estate market in San Francisco was in a decline. . . . No evidence was presented that any prospective buyer expressed a serious interest in any of the Units." The court stated it was not persuaded by the testimony of prosecution expert John Mateo that unit 4802 was worth \$1.6 million and unit 4902 was worth \$1,615,000 in January 2009, finding instead that each unit was worth \$1,225,000 at that time. Accordingly, the court found that Hwang had "sold the properties for an amount that was greater than the appraised values in January 2009. There is no showing of restitution for Loss of Property Value."

B. Hwang's Civil Action

Meanwhile, Hwang filed a civil action against Shah for negligence; negligence per se; conversion; trespass; slander of title; and concealment.³ A bench trial was held in 2017.

At the start of trial, each side filed motions in limine to preclude relitigation of certain issues decided in the criminal case. Hwang asked the trial court to exclude evidence disputing Shah's liability due to the collateral

³ Hwang's action was consolidated with a matter previously filed by Commonwealth Land Title Insurance Company, which had insured the loans fraudulently obtained by Shah and his coconspirators.

estoppel effect of the criminal judgment. Shah sought to preclude Hwang from offering evidence of lost profits on the resale of units 4802 and 4902. The court indicated its intent to apply collateral estoppel, where appropriate, as the evidence came in.

Following her case-in-chief, Hwang made an oral request for discovery regarding Shah's financial condition in support of her request for punitive damages. The trial court granted the motion, finding Hwang provided clear and convincing evidence that she was entitled to punitive damages. The court ordered Shah to produce documents within 50 days showing the amount of money he received from the proceeds of the loans on Hwang's properties and all economic benefits he gained from use of the loan proceeds. He was also ordered to produce documents regarding his financial condition, including bank statements; income records; financial records of businesses and companies in which he held an interest; and records of real property ownership.

Shah produced only 64 pages of documents, most of which were unresponsive to the trial court's order. Shah claimed he was impaired in his ability to respond to the order because most of his documents had been seized by the district attorney. He also testified that his attorneys had subpoenaed records from the district attorney, and that the district attorney was expected to bring those documents to trial that same day. The district attorney, who was in attendance, informed the trial court that Shah's counsel had not subpoenaed the district attorney's office until the same day that Shah's production was due, and many of the requested documents were not immediately available for either review or production. Meanwhile, Hwang introduced evidence that Shah had transferred real properties after his documents were seized in 2010 and during his incarceration. Hwang also

introduced a 2009 loan application in which Shah and his wife claimed a \$20 million net worth.

In September 2018, the trial court issued its final statement of decision finding Shah liable for slander of title and trespass. The court first concluded that Shah was precluded from relitigating his liability due to the collateral estoppel effect of the criminal judgment. The court then found that Hwang was not barred by collateral estoppel from litigating the lost profits issue because she “was not a party nor in privity with a party in the criminal matter.” The court found that Hwang played only a “limited role” and “exercised no ‘control’ over the criminal proceedings but for her necessary presence as the unfortunate victim of Mr. [Shah’s] scheme.”

On the trespass claim, the trial court awarded Hwang \$100 in nominal damages, \$100,000 for annoyance and discomfort, and \$500,000 for emotional distress. On the slander of title claim, the court credited the testimony of Hwang’s expert, Stanley Tish, that the market value of units 4802 and 4920 was \$1,675,000 each and awarded Hwang \$954,541 in damages for “Financial Loss Vendibility” based on the difference between the fair market value during the time title was clouded and the sales prices she obtained once title cleared. The court also awarded Hwang \$1 million in punitive damages on her trespass claim, and \$600,000 in punitive damages on her slander of title claim. The court found that Shah had not complied with the order to produce documents showing his current financial condition and rejected his claim of indigence. The court further noted that Shah had demonstrated no remorse for his actions, and that Hwang was “severely impacted by Mr. [Shah’s] reprehensible conduct.”

Judgment was entered in December 2018, and Shah timely appealed.⁴

DISCUSSION

A. Collateral Estoppel

Shah contends the trial court erroneously denied his motion to preclude Hwang from litigating the issue of lost profits after it was decided against the prosecution during the criminal restitution proceedings. While Shah acknowledges that Hwang was not a “party” to the criminal case, he contends she was in privity with the prosecution to justify application of collateral estoppel and foreclose relitigation of the lost profits issue.

Collateral estoppel, one of two aspects of the doctrine of res judicata, bars relitigation of an issue necessarily decided against a party or their privies in a prior action or proceeding. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.) Even where successive proceedings are different in nature (e.g., criminal and civil), collateral estoppel may still bar relitigation of issues decided in the first action. (*Rutherford v. Cal.* (1987) 188 Cal.App.3d 1267, 1282.)

Traditionally, collateral estoppel has been applied where five threshold requirements are met: (1) the issue sought to be precluded from relitigation is identical to that decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought is the same

⁴ The judgment was later amended to correct errors in the amount of the monetary award, and notice of entry of the amended judgment nunc pro tunc was served after Shah had filed his notice of appeal. We liberally construe the notice of appeal to include the amended judgment, as the amendment merely changed the amount of damages, and Hwang does not claim any resulting prejudice. (*EEC Construction, Inc. v. Oak Park Calabasas Homeowners Assn.* (2004) 122 Cal.App.4th 994, 1003, fn. 5.)

as, or in privity with, the party to the former proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Whether collateral estoppel applies is a question of law reviewed de novo. (*Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 321.)

The only disputed element of collateral estoppel in the present appeal is the privity requirement. “ ‘Privity is a concept not readily susceptible of uniform definition. Traditionally it has been held to refer to an interest in the subject matter of litigation acquired after rendition of the judgment through or under one of the parties, as by inheritance, succession or purchase. [Citation.] The concept has also been expanded to refer to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights [citations] and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is “sufficiently close” so as to justify application of the doctrine of collateral estoppel.’ ” (*Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 125 (*Kerner*).)

Here, the same general subject matter was at stake in both the criminal restitution and civil proceedings, i.e., recovery for the harm caused by Shah. But in the traditional sense of privity, it cannot be said that the People have a direct interest in restitution proceeds which is passed “ ‘as by inheritance, succession or purchase’ ” to crime victims. (*Kerner, supra*, 206 Cal.App.4th at p. 125.) Nor do the People and crime victims have a “ ‘mutual or successive relationship to the same rights of property.’ ” (*Ibid.*)

Do the People and crime victims share a sufficient identity of interests under expanded notions of privity? (See *Kerner, supra*, 206 Cal.App.4th at p. 125.) Hwang answers that question in the negative, reasoning that

obtaining victim compensation is not the People’s only objective in restitution proceedings. “A restitution order has objectives beyond simply indemnifying the victim. It also seeks to rehabilitate the defendant and deter defendant and others.” (*People v. Bernal* (2002) 101 Cal.App.4th 155, 161–162; see *Kelly v. Robinson* (1986) 479 U.S. 36, 52–53 (*Kelly*) [criminal proceedings focus on state’s interests in rehabilitation and punishment rather than victim’s desire for compensation]; *People v. Moser* (1996) 50 Cal.App.4th 130, 134 [same].)

We agree the interests of the People in pursuing restitution span more broadly than the interests of a crime victim, but we also note that in many cases, seeking maximum restitution for a victim will align with state rehabilitation and deterrence objectives. Nonetheless, we need not determine whether the relationship between the People and crime victims are sufficiently close under expanded notions of privity. As Shah acknowledges, “[n]otwithstanding expanded notions of privity, collateral estoppel may be applied only if due process requirements are satisfied.” (*Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 875 (*Clemmer*).) Due process requires not only an identity or community of interests, but also that the party to be estopped had “‘adequate representation by[] the losing party in the first action’” and “‘should reasonably have expected to be bound by the prior adjudication.’” (*California Physicians’ Service v. Aoki Diabetes Research Institute* (2008) 163 Cal.App.4th 1506, 1522.)

“ ‘ “The ‘reasonable expectation’ requirement is satisfied if the party to be estopped had a proprietary interest in and control of the prior action” ’ ” (*Rodgers, supra*, 136 Cal.App.4th at p. 92.) On this score, Shah argues that Hwang exercised control of the prior action by retaining attorneys who “participated at all times during these proceedings” by paying

for the prosecution expert to testify on the market value of the properties;⁵ meeting extensively with the assistant district attorney; attending all of the hearings; and benefitting from the evidence presented. But Shah provides no legal authority indicating that a crime victim who engages in such actions exercises sufficient “control” over the prosecution and the restitution proceeding for purposes of the due process inquiry.

Indeed, the notion of private counsel controlling criminal restitution proceedings is contrary to California law, which “does not authorize private prosecutions. Instead, “ ‘ “[t]he prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor [¶] [who] ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.” ’ ” (*People v. Dehle* (2008) 166 Cal.App.4th 1380, 1386–1387 (*Dehle*); see *Kelly, supra*, 479 U.S. at p. 52 [victim has “no control” over amount of or over decision to award restitution].) Furthermore, it is undisputed here that the trial court in the criminal case refused to allow Hwang’s private counsel to actively participate in examination and argument during the restitution hearings. Thus, notwithstanding Hwang’s payment of expert witness fees, the testimony that could be elicited and the legal arguments drawn therefrom were entirely within the control of the prosecutor.

Shah further claims that Hwang “*independently* filed papers and *made motions* at restitution,” but he cites only a prefatory statement in the restitution order listing Hwang as among those who filed “[v]arious motions and papers[.]” Hwang clarifies, and Shah does not dispute, that the only

⁵ During her testimony in the civil trial, Hwang denied that she had found and hired John Mateo to testify at the restitution hearings, but she admitted that she paid Mateo’s fee because the district attorney “didn’t have the funds to pay” and had “asked [her] to pay.”

filings by her counsel were papers regarding the legal work performed after Shah demanded that Hwang produce copies of her attorney's bills. Contrary to Shah's suggestion, there is no indication Hwang's attorneys provided legal briefing on the core substantive issues, such as the issue of lost profits.

Also relevant to the reasonable expectation requirement is the recognition that under controlling law, crime victims have not only a constitutional right to restitution (Cal. Const., art I, § 28, subd. (b)(13)), but the right to "pursue a civil remedy irrespective of the restitution order, subject only to the requirement that the civil judgment credit any amounts paid under the restitution order." (*Vigilant Ins. Co. v. Chiu* (2009) 175 Cal.App.4th 438, 443–444.) Thus, Hwang could reasonably expect to pursue and potentially recover non-duplicative damages in her civil action that went beyond the amounts ordered in the restitution proceedings.

We further conclude the adequate representation requirement was not met. "A party is adequately represented for purposes of the privity rule "if his or her interests are so similar to a party's interest that the latter was the former's virtual representative in the earlier action." [Citation.] ' [Citation.]" (*Rodgers, supra*, 136 Cal.App.4th at p. 91.) Prosecutors in criminal proceedings have a distinct public role requiring them to exercise their discretionary functions " "with the highest degree of integrity and impartiality, and with the appearance thereof[.]" ' " (*Dehle, supra*, 166 Cal.App.4th at p. 1387.) " "The nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. "The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of 'The People' includes the defendant and his family and those who care about him. . . . Thus the district attorney is expected to

exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual.” ’ ” (*Ibid.*) Given the prosecutor’s distinct role as the representative of the People at large, we cannot say the prosecutor here acted as Hwang’s “virtual representative” (*Rodgers, supra*, 136 Cal.App.4th at p. 91) for purposes of the privity rule and its due process component.

Shah nevertheless contends it was unjust to permit Hwang “two bites at the apple,” as this resulted in “two diametrically opposed findings on the exact same factual issue.” These arguments echo the public policies underlying the doctrine of collateral estoppel—e.g., promoting judicial economy by minimizing repetitive litigation, preventing inconsistent judgments, preventing harassment by vexatious litigation. (*Mooney v. Caspari* (2006) 138 Cal.App.4th 704, 717–718.) As discussed, however, the collateral estoppel doctrine may not be applied where, as here, due process requirements have not been satisfied. (*Clemmer, supra*, 22 Cal.3d at p. 875.)

For all of these reasons, we conclude the trial court did not err in refusing to apply collateral estoppel against Hwang on the lost profits issue.⁶

⁶ We observe that *People v. Smith* (2011) 198 Cal.App.4th 415 upheld a trial court’s decision to allow a crime victim’s attorney to present the evidence and arguments at a restitution hearing while a deputy district attorney who did not try the case was merely in attendance. *Smith*, however, did not involve the question of whether the prosecution and victim were in privity for collateral estoppel purposes, and we need not and do not decide whether *Smith* was correctly decided. We simply note our reasoning here does not foreclose the possibility that, in another case with different facts, the requirements of due process might be deemed sufficiently and appropriately satisfied to justify giving collateral estoppel effect to a criminal restitution order in a subsequent civil damages case.

B. Financial Discovery and Punitive Damages

Shah contends the trial court abused its discretion during trial by ordering his production of documents regarding his financial condition. Shah claims that Civil Code section 3295 permits such discovery only through pretrial motion procedures, not in the midst of a trial that had never been bifurcated into separate phases for liability and damages.

Mike Davidov Co. v. Issod (2000) 78 Cal.App.4th 597 (*Issod*) rejects this same argument. As *Issod* held, “Civil Code section 3295, subdivision (c), allows the trial court, ‘at any time,’ to enter an order permitting the discovery of a defendant’s profits and/or financial condition, if the plaintiff has established that there is a substantial probability that he or she can prevail on a claim upon which an award of punitive damages can be based.” (*Issod*, at p. 609.) Acknowledging that Civil Code section 3295, subdivision (c), refers to pretrial motion procedures, *Issod* interprets the statute as requiring such procedures only where the plaintiff has yet to prevail at trial. In *Issod*’s words, “once there has been a determination of liability by the trier of fact based on an actual weighing of the credibility of witnesses, this kind of affidavit-and-hearing procedure is patently superfluous.” (*Ibid.*) We find *Issod*’s reasoning persuasive and adopt it.

Shah further argues the trial court’s discovery order was “fundamentally unfair” because he had no proper ability to gather the relevant documents while incarcerated. We review the trial court’s ruling for abuse of discretion (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1242) and find no abuse here. It is not unfair to require the defendant to produce financial records after a determination of liability “[s]o long as the trial court allows the defendant sufficient time[.]” (*Issod, supra*, 78 Cal.App.4th at p. 609.) Shah’s attempt to distinguish *Issod*

as involving a non-incarcerated defendant is unpersuasive, as the trial court here reasonably accommodated Shah's incarceration by giving him 50 days to comply. (Cf. *Issod*, at pp. 603, 609 [affirming "next day" production order].)

It appears plausible that documents responsive to the trial court's order may have been seized by the district attorney at the time of Shah's arrest. But the record nevertheless shows that Shah made no diligent effort to retrieve any of those documents, and his subpoena to the district attorney's office was served on the same day his production was due. Meanwhile, Shah admitted on cross-examination that while he was incarcerated, he was in contact with lawyers and family members who could have assisted in his compliance with the trial court's order.

Shah accuses the trial court of prejudging Hwang's entitlement to punitive damages and argues that the continuance of trial pending Shah's production of financial discovery "served no legitimate purpose but to give the plaintiff a 'leg up' on the defendant." These claims are unfounded and merit little discussion. The trial court's order, issued after Hwang had shown her entitlement to punitive damages by clear and convincing evidence, served the legitimate purpose of assisting the court in setting a punitive damages award at an amount relative to Shah's wealth. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110.)

Finally, we address Shah's claim that the punitive damages award was excessive. "[W]e review an award of punitive damages to determine whether the award is excessive as a matter of law, or raises a presumption that it is the product of passion or prejudice." (*Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 77 (*Bankhead*)). Due process principles prohibit the imposition of " 'grossly excessive or arbitrary' " punitive damages awards. (*Id.* at p. 84.) Thus, we consider the following " 'three guideposts' ": (1) the

degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages award and the civil penalties authorized or imposed in comparable cases. (*Id.* at pp. 84–85, citing *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418.) In making our assessment, we do not reweigh witness credibility or resolve evidentiary conflicts, and we view the evidence in the light most favorable to the judgment. (*Bankhead*, at pp. 76–77.)

Shah provides no meaningful discussion of these authorities. Although he claims the punitive damages award is beyond what he can pay, he does not dispute the substantial evidence of his considerable wealth, including exhibits showing that he and his wife claimed a net worth of \$20 million, and that he had transferred several real properties during his incarceration. While Shah complains his testimony of his negative net worth “must have fallen on deaf ears,” we do not reweigh such testimony or resolve conflicts in the evidence on appeal. (*Bankhead*, *supra*, 205 Cal.App.4th at pp. 76–77.)

Shah further contends the amount of punitive damages “should bear at least some rational relationship to the amount of the other damages,” but he again provides no meaningful analysis of the relevant authorities to demonstrate reversible error. We observe that the \$1.6 million punitive damages award bore an approximate one-to-one ratio compared to the total compensatory damages award. This was well within constitutional limits given the evidence of Shah's conduct and its impact on Hwang, and the substantial amount of compensatory damages awarded. (*Walker v. Farmers Ins. Exchange* (2007) 153 Cal.App.4th 965, 974 [affirming reduction of

punitive damages award to one-to-one ratio where compensatory damages were substantial (over \$1.5 million)].)

C. Trespass Damages

Shah argues that emotional distress damages for trespass are not authorized as a matter of law. He is incorrect. The plaintiff in a trespass action “may recover for annoyance and discomfort, *including emotional distress or mental anguish*, proximately caused by the trespass[.]” (*Hensley v. San Diego Gas & Electric Co.* (2017) 7 Cal.App.5th 1337, 1349 (*Hensley*)) Shah’s reliance on *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, disapproved on other grounds in *Scholes v. Lambirth Trucking Co.* (2020) 8 Cal.5th 1094, 1117, is unavailing. *Kelly v. CB&I Constructors, Inc.* simply holds that a nonresident property owner may not recover annoyance and discomfort damages. There is no dispute that Hwang was the resident owner of the trespassed premises.⁷

Shah further challenges the damages award for emotional distress as excessive. We review a damages award for substantial evidence (*Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1285), and our

⁷ We decline to endorse the portion of *Kelly v. CB&I Constructors, Inc.* distinguishing annoyance and discomfort from “‘pure’” emotional distress, as this is dictum based on nonbinding out-of-state court authority. (*Hensley, supra*, 7 Cal.App.5th at p. 1355.) That said, we note the trial court here made one award for annoyance and discomfort damages (\$100,000) and another award for emotional distress damages (\$500,000). To the extent Shah suggests this was an error that resulted in double recovery for Hwang, we cannot agree. The record is reasonably clear that the court awarded \$600,000 for the *aggregate* amount of damages it deemed appropriate on the trespass claim. This is evident from the statement of decision in which the court specifically identified the emotional distress component of the award to address Hwang’s “fear, stress, anxiety, mental anguish[.]” as distinct from the damages for Hwang’s “annoyance and inconvenience[.]” No double recovery appears.

inquiry “ “begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [award.] [Citations.]” ’ ’ (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658) We view the evidence in the light most favorable to the prevailing party and resolve all conflicts in its favor. (*Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1166.)

Hwang testified she was emotionally “devastated” and “broken” by the ordeal caused by Shah and his coconspirators. She had difficulty sleeping and was concerned that her savings were being depleted. The experience had “changed [her] life[,]” as she was constantly concerned about her personal safety, especially after learning that Shah had become the purported owner of a murder victim’s property. Hwang was subjected to fear and anxiety for her safety and property for a prolonged period of time, as Shah was not arrested until a year after Hwang discovered the fraud scheme. Viewing Hwang’s testimony in the light most favorable to the judgment, we conclude it was sufficient to justify the substantial emotional distress damages awarded in this case.

Shah argues “it is inconceivable that the trespass was the legal cause of . . . damages” because Hwang had allowed many individuals to inspect her unit while it was for sale; she was out of the country at the time of the trespass; and there was no indicia left behind of the trespass. These arguments go to the weight and credibility of Hwang’s testimony, which we do not reassess on substantial evidence review. (*Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 107.)

Shah claims the trial court “blocked” him from eliciting evidence on Hwang’s damages and relied only on the arguments of Hwang’s counsel to assess damages. However, Shah does not explain how he was prevented from

eliciting evidentiary facts, citing only a portion of the reporter's transcript in which the trial court sustained a relevance objection to his attorney's question to Hwang: "Was [Shah] always in a wheelchair to your recollection?" Shah neither provides an argument as to why the court's ruling was a prejudicial abuse of discretion, nor does he explain how disallowing this line of inquiry "blocked" him from otherwise eliciting evidence on Hwang's damages. Also meritless is Shah's contention that the award was based solely on the *arguments* of Hwang's counsel. As discussed, Hwang's testimony was substantial *evidence* that supported the award.

DISPOSITION

The judgment is affirmed. Hwang is entitled to her costs on appeal.

Fujisaki, Acting P. J.

WE CONCUR:

Petrou, J.

Chou, J.*

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* Judge of the Superior Court of San Mateo County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.